

**Letter from the Agent of the Libyan Arab Jamahiriya  
to the Registrar, dated 4 November 1997**

*[Translation]*

Referring to my letter No. 1623 of yesterday's date, 3/11/1997, in which I transmitted to you the reply of the Great Libyan Arab Jamahiriya to the questions asked, at the hearing on Wednesday 22 October last, by President Schwebel and Judge Koroma, I would be grateful if you could inform Members of the Court that the replies of the Great Libyan Arab Jamahiriya are linked and should be read together.

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[Translation]

**Reply of the Libyan Arab Jamahiriya  
to the question of President SCHWEBEL**

1. Libya's case, such as it was argued during the hearing on Wednesday 22 October 1997, is that there has been an abuse or misuse of power if the Security Council has determined that there exists a threat to the peace as the basis for requiring Libya to surrender the accused to the United States or to the United Kingdom.
2. The Security Council's power to determine that there exists a threat to the peace within the meaning of Article 39 of the Charter is largely discretionary, but it is not unlimited. That power must, at the very least, be exercised in accordance with the Purposes and Principles of the United Nations (Article 24 of the Charter).

The Court does not have the right to substitute itself for the Council in the exercise of the discretionary power which the Charter confers upon it. The determination that there is a threat to the peace therefore implies, in part, a subjective assessment which can only be made by the Council. Chapter VII of the Charter does not charge the Court itself with determining whether there exists a threat to the peace.

Nonetheless, the Court is entitled to find that, by determining that there exists a threat to the peace in a particular case, the Security Council acted *ultra vires* or used its powers for purposes other than those for which those powers were conferred on it (see *Legality of the use by a State of nuclear weapons in armed conflict*, I.C.J. Reports 1996, p. 82, para. 29). In doing this, the Court may conclude, on the basis of an objective, legal analysis, that the Council breached the United Nations Charter.

[Translation]

**Reply of the Libyan Arab Jamahiriya  
to the question of Judge KOROMA**

1. In so far as Security Council resolutions may be interpreted in such a way as to ensure that they are in accordance with the Charter, the Court is not called upon to exercise a judicial review function. Libya considers that that is the case here. It also considers that there is no argument as to the entitlement of the Court to *interpret* resolutions of the Council.
2. In Libya's view, the Court would only be obliged to carry out a judicial review of the Council resolutions in the event that the Court interpreted one or more of the Council resolutions as *requiring* Libya to surrender the two suspects to the United States or to the United Kingdom.

That review would be of the extent to which the Security Council had complied with the limits which the Charter imposes on the exercise of its powers.

The Court "states what the law is". It can, therefore, as it has already done in the past (*Certain expenses of the United Nations, I.C.J. Reports 1962*, pp. 156-157, 170, 177-178; *Namibia, I.C.J. Reports 1971*, pp. 46 and 53, paras. 94 and 115; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, I.C.J. Reports 1996*, p. 82, para. 29) rule on whether resolutions of the Security Council comply with the Charter.

Libya is not however, asking the Court to rule on the *validity* of the resolutions in issue. The Court is not being asked to declare that such or such resolution is null and void. The Court is only being asked, if necessary, to rule that the resolutions are *not capable of operating* against Libya, in so far as they require Libya to surrender the accused to the United States or to the United Kingdom. The judgment of the Court on that point would only be binding in so far as it related to the relationship between the parties to the present disputes.

3. Given its incidental nature, judicial review by the Court could only have as its *direct subject-matter* the parts of the resolutions relating to the way in which the accused are to be brought to justice. The *binding effect* of the judgment of the Court would be limited to the requirements laid down by the Council to that effect.